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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,921	08/15/2001	Steven Neil Tischer	010159	1134
7590 01/23/2006				
WITHERS & KEYS, LLC P.O. BOX 71355 Marietta, GA 30007-1355		EXAMINER HASHEM, LISA		
		ART UNIT 2645		PAPER NUMBER
DATE MAILED: 01/23/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/929,921

Applicant(s)

TISCHER, STEVEN NEIL

Examiner

Lisa Hashem

Art Unit

2645

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 December 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-19, 28-31, 36, and 37.
Claim(s) withdrawn from consideration: 20-27 and 32-35.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

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Continuation of 11. does NOT place the application in condition for allowance because:

In regards to Applicant's arguments, that Ying fails to disclose in claim 1 '... a planar antenna is capacitively coupled...', Examiner disagrees. It is true that a protector (Fig. 2, 14) for a portable communication device of Ying comprises a planar antenna (e.g. printed pattern antenna of an electrically conductive material) (Fig. 3, 40) capacitively coupled to the signal processing circuit (e.g. radio circuitry; Fig. 3, 4). However the claim (e.g. claim 1) only recites '...capacitively coupling...'. The claims do not recite that '...the capacitive coupling in the general sense is a term of art involving a capacitance in series within a circuit...' or '...the series capacitance is the result of a space between electrodes, the space being non-conductive and possibly including a dielectric such as air or some of the non-conductive material...', as applicant argued on page 7, 2nd paragraph.

Further, the claims do not recite 'how' or 'what' the claimed 'capacitive coupling' is. Examiner interprets the claimed 'capacitively coupling' feature as noted in 'The Authoritative Dictionary Of IEEE Standards Terms, Seventh Edition' Published in Dec. 2000, wherein on page 141 the definition of capacitive coupling is defined as, 'see: electrical coupling' and the definition of electrical coupling on page 358 states '...Electrical charges in conductors of a disturbed circuit formed by electrical induction. Since the ratio of a conductor's electrostatic charge to the potential difference between conductors (required to maintain that charge) is the general definition of capacitance, electrical coupling is also called capacitive coupling...' and further the definition states that '...capacitive coupling' is a synonym for electrical coupling...'.


Regarding claims 28 and 36, please see Examiner's comments above. Ying clearly discloses the claimed '...capacitively coupling an antenna...'.

The limitations of cancelled claims 34 and 35 is now included in claim 36. The rejections of claims 34-36 in the Final Office Action filed on 10-6-2005 still clearly reject newly amended claim 36.

In response to applicant's argument that the examiner's conclusion of 'capacitive coupling' is based upon improper hindsight reasoning, it must be recognized that any judgment is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made (the IEEE standard definition of 'capacitive coupling' noted above), and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper.

Ying clearly discloses the planar antenna (Fig. 3, 40) is capacitively coupled to the signal processing circuit (see Fig. 3; col. 2, lines 25-34; col. 3, line 56 - col. 4, line 23). Please see all rejections in the Final Rejection filed on 10-6-2005.

Note: In an exchange of telephone calls with Applicant's representative on Dec. 1, 2005 the Examiner discussed how Ying clearly discloses the 'capacitively coupled' feature in Ying based on the Final Office Action filed on 10-6-2005.


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